

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CARLTON M. SIMS,

Plaintiff,

v.

CORRECTIONAL OFFICER
PALACIOS,

Defendant.

Case No. 2:23-cv-01310-VBF-PD

ORDER DISMISSING ACTION
FOR FAILURE TO PROSECUTE

I. Pertinent Procedural History and Plaintiff's Claims

On August 7, 2023, Plaintiff Carlton M. Sims ("Plaintiff"), who is proceeding pro se, filed a First Amended Complaint under 42 U.S.C. § 1983 against Defendant Correctional Officer Palacios ("Palacios"). [Dkt. No. 11.] Plaintiff alleges that Palacios opened his legal mail in violation of his constitutional right to be present and committed "mail fraud." [Id. at 3, 5.] He seeks \$20,000 in monetary damages. [Id. at 6.]

On January 9, 2024, the Court issued a screening order dismissing the First Amended Complaint for failure to state a claim under the First Amendment and directed Plaintiff to file a Second Amended Complaint curing the defects identified by the Court no later than February 6, 2024. [Dkt. No.

1 12.] The Court’s Order was mailed to the address listed on the First Amended
2 Complaint, which was the California State Prison – Los Angeles County, in
3 Lancaster, California. [Id.]

4 On February 12, 2024, the Court’s order was returned from California
5 State Prison-Los Angeles County with a notation “RETURN TO SENDER--
6 inmate out to court.” [Dkt. No. 13.]

7 On February 16, 2024, the Court issued an Order to Show Cause
8 (“OSC”) re: Plaintiff’s current address and failure to file a Second Amended
9 Complaint. [Dkt. No. 14.] According to the California Incarcerated Records &
10 Information Search (“CIRIS”), Plaintiff was in the custody of the CDCR at
11 Salinas Valley State Prison, 31625 Highway 101, Soledad, CA, 93960. See
12 <https://cdcr.ca.gov/search>. The Court ordered Plaintiff to provide a current
13 address and a Second Amended Complaint curing the deficiencies outlined in
14 Docket Number 12 to the Court no later than March 13, 2024. [Id.] Plaintiff
15 was cautioned that if he failed to respond to the OSC, the Court would
16 recommend dismissal of this action for failure to prosecute. [See id.] The OSC
17 was mailed to the address listed on the docket and to Salinas Valley State
18 Prison. [Id.]

20 On March 12, 2024, the Court’s OSC was returned from California State
21 Prison-Los Angeles County and Salinas Valley State Prison with notations
22 “RETURN TO SENDER--inmate out to court.” [Dkt. Nos. 15-20¹.]

23 To date, Plaintiff has not responded to the Court’s orders, provided an
24 updated address, or otherwise communicated with the Court about his case
25 since August 2023. Accordingly, the case is now subject to dismissal for

27 ¹ The return envelope for the OSC sent to California State Prison-Los Angeles
28 County also listed an address for a parole agent, Travis Brehm, in Sacramento,
California. [See Dkt. No. 20.] However, CIRIS still lists Plaintiff’s address at SVSP.

1 Plaintiff's failure to prosecute pursuant to Rule 41(b) of the Federal Rules of
2 Civil Procedure and Local Rule 41-6.

3 II. Discussion

4 Rule 41(b) grants district courts the authority to sua sponte dismiss
5 actions for failure to prosecute. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30
6 (1962). In determining whether dismissal for lack of prosecution is warranted,
7 a court must weigh several factors, including: (1) the public's interest in
8 expeditious resolution of litigation; (2) the court's need to manage its docket;
9 (3) the risk of prejudice to defendants; (4) the availability of less drastic
10 sanctions; and (5) the public policy favoring the disposition of cases on their
11 merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002); *Ferdik v.*
12 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992). Dismissal is appropriate
13 under the foregoing analysis "where at least four factors support dismissal ...
14 or where at least three factors 'strongly' support dismissal." *Hernandez v.*
15 *City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (citations omitted).

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17 In this case, the first two factors – public interest in expeditious
18 resolution of litigation and the need to manage the Court's docket – weigh in
19 favor of dismissal. Plaintiff did not file a Second Amended Complaint or
20 provide an updated address. His failure to file an amended complaint or
21 update his address—or show good cause for his delay—prevents the Court
22 from moving this case toward disposition and shows that Plaintiff does not
23 intend to litigate this action diligently.

24 Arguably, the third factor – prejudice to Defendant – does not counsel in
25 favor of dismissal because no viable pleading exists, and thus Defendant is
26 unaware that a case has been filed. However, the Ninth Circuit has held that
27 prejudice may be presumed from unreasonable delay. See *In re Eisen*, 31 F.3d
28 1447, 1452-53 (9th Cir. 1994); *Moore v. Teflon Commc'nns. Corp.*, 589 F.2d 959,

1 967-68 (9th Cir. 1978). Plaintiff's inaction in this matter is an unreasonable
2 delay, given that the Court has attempted to mail several orders to Plaintiff
3 and has received no communication. In the absence of any explanation, non-
4 frivolous or otherwise, for Plaintiff's delay, the Court presumes prejudice. See
5 Laurino v. Syringa Gen. Hosp., 279 F.3d 750, 753 (9th Cir. 2002) (presumption
6 of prejudice can be rebutted by a non-frivolous explanation); Pagtalunan, 291
7 F.3d at 642 (citing Yourish v. California Amplifier, 191 F.3d 983, 991 (9th Cir.
8 1999)).

9 The fourth factor – the availability of less drastic sanctions – ordinarily
10 counsels against dismissal. However, the Court attempted to avoid outright
11 dismissal by giving Plaintiff ample time to communicate with the Court,
12 update his address, and file an amended complaint. Plaintiff was also
13 expressly warned that failure to comply with the Court's orders could result in
14 dismissal. [See Dkt. Nos. 12, 14.] Thus, the Court explored the only
15 meaningful alternatives to dismissal in its arsenal and found that they were
16 not effective. See Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)
17 (“The district court need not exhaust every sanction short of dismissal before
18 finally dismissing a case, but must explore possible and meaningful
19 alternatives.”) (citation omitted).

20 The fifth factor – the general policy favoring resolution on the merits –
21 ordinarily weighs against dismissal. Pagtalunan, 291 F.3d at 643. It is,
22 however, the responsibility of the moving party to move the case toward
23 disposition on the merits at a reasonable pace and to refrain from dilatory and
24 evasive tactics. Morris v. Morgan Stanley & Co., 942 F.2d 648, 652 (9th Cir.
25 1991). Because Plaintiff has failed to participate in his own lawsuit, it does
26 not appear that retention of this case would increase the likelihood of the
27 matter being resolved on its merits. This factor does not weigh in favor of or
28 against dismissal.

1 In sum, four out of the five factors support dismissal. The Court
2 concludes that dismissal for failure to prosecute is warranted.

3 For the foregoing reasons, this action is dismissed for failure to
4 prosecute.

5 IT IS SO ORDERED.

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7 Dated: August 28, 2024

/s/ Valerie Baker Fairbank

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10 HON. VALERIE B. FAIRBANK
11 UNITED STATES DISTRICT JUDGE

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